Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Texas Office of the Attorney General
Docket No. A-06-132
Decision No. 2124

DATE: November 2, 2007

DECISION

The Texas Office of the Attorney General, Child Support Division (Texas), appealed a determination by the Administration for Children and Families (ACF) disallowing $357,088 in federal financial participation (FFP) in costs that Texas claimed under the Child Support Enforcement program of title IV-D of the Social Security Act (Act), for the period October 1, 2003 through June 30, 2004. Texas claimed the funds for its costs of processing child support payments made by non-custodial parents in child support cases that were not eligible for assistance under the federal Child Support Enforcement program (non-IV-D cases). For some non-IV-D cases, the Act provides FFP for state costs of processing payments under support orders in which the income of the non-custodial parent is "subject to withholding." ACF disallowed Texas's claims on the ground that Texas did not collect the support payments through withholding the income of the non-custodial parents, so the processing costs did not qualify for FFP. Texas did not dispute the factual premise that the support payments were not collected through withholding. The issue is whether "subject to withholding" as used in the Act requires actual withholding, as ACF argues, or merely a support order authorizing withholding, even though support payments are made through some other means, as Texas argues.

As explained in our decision, we conclude that ACF's position, of which Texas had notice through an ACF policy statement issued in 1997, is supported by the relevant language of the statute and the legislative history, whereas Texas's position is not. Accordingly, we sustain the disallowance.

Applicable law and policy

Title IV-D of the Act provides funds to states "for the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living," among other activities, "and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for assistance under a State program funded under part A) for whom such assistance is requested . . . ." Sections 451-469B of the Act; 42 U.S.C. §§ 651-669b.[1] States with approved state plans for administering the IV-D program may generally receive FFP at the rate of 66 percent in the amounts they expend for the operation of those plans. Sections 454 and 455(a)(1)(A),(2)(C) of the Act.

As part of their plans, states must "operate a State disbursement unit [SDU] in accordance with section 454B" of the Act, for "the collection and disbursement" of payments under orders of support. Sections 454(27)(A), 454B(a)(1) of the Act. Section 454B of the Act outlines the functions of the SDU, and describes the types of cases for which the SDU must process support payments:

> (a) STATE DISBURSEMENT UNIT —
> (1) IN GENERAL.—In order for a State to meet the requirements of this section, the State agency must establish and operate a unit (which shall be known as the "State disbursement unit") for the collection and disbursement of payments under support orders—
> (A) in all cases being enforced by the State pursuant to section 454(4); and
> (B) in all cases not being enforced by the State under this part in which the support order is initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 466(a)(8)(B).

Section 454B(a) of the Act (emphasis added).

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[1] The current version of the Social Security Act can be found at www.ssa.gov/OP_Home/ssact/comp-ssa.htm. Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Also, a cross reference table for the Act and the United States Code can be found at 42 U.S.C.A. Ch. 7, Disp Table.

Section 466(a)(8)(B), referenced in section 454B, above, requires that a state have in effect laws requiring the use of procedures to increase the effectiveness of the state's IV-D program. The required procedures include "[p]rocedures under which **all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part**" (emphasis added) will include the requirement that–

> (i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

This appeal centers on the meaning of the phrase "subject to withholding" in the requirement, at section 454B(a)(1)(B), that a state establish and operate a SDU for the collection and disbursement of payments under post-1993 support orders "in all cases not being enforced by the State under this part" (i.e., non-IV-D cases) "in which the income of the noncustodial parent is subject to withholding pursuant to section 466(a)(8)(B)."[2] The parties dispute whether "subject to withholding" means that the income of the non-custodial parent is actually being withheld (as by an employer), as ACF contends, or only that there be a court order authorizing withholding, even though the support payments are made in some other fashion, such as directly to the SDU by the non-custodial parent, as Texas contends.[3]

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[2] Regulations at Chapter III of 45 C.F.R. (Parts 301-310) implement the requirements of title IV-D. There is no definition of "subject to withholding" in the regulations, and the parties did not cite any specific provision of the regulations as supporting their arguments.

[3] In this decision we refer to "cases not being enforced by the State under this part in which the support order is initially issued in the State on or after January 1, 1994" (section 454B(a)(1)(B)) as post-1993 non-IV-D cases, and to "child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this

(continued...)

ACF stated its policy on this question in September 1997 in an Action Transmittal on the subject of "Collection and Disbursement of Support Payments." The relevant portion states:

> Q40: Does "subject to wage withholding" under §454B(a)(1)(B) of the Act mean that the individual currently has a support obligation withheld from his wages, or is the definition broader to include individuals who are subject to wage withholding if their payments fall into arrears?
>
> A40: Under §454B(a)(1)(B) of the Act, the SDU is responsible for the collection and disbursement of payments in non-IV-D cases in which the support order was initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 466(a)(8)(B). "Subject to wage withholding" in this context means that the individual's income is currently being withheld from his or her wages. It does not include cases that may eventually be subject to income withholding if a payment is missed or cases which should be paying through withholding but are not.

OCSE-AT-97-13 (Sept. 15, 1997) (emphasis added).

Background

The disallowance arose from a review by the ACF Office of Child Support Enforcement (OCSE) of selected costs that Texas claimed for the operation of its Child Support Enforcement program for the period July 1, 2003 through June 30, 2004. The review determined that, for the period October 1, 2003 through June 30, 2004, Texas had claimed a total of $577,853 in FFP for the costs of processing child support collections in non-IV-D cases through its SDU in cases that OCSE determined were not eligible for FFP because the collections were not made through wage withholding. Texas Exhibit (Ex.) F.[4] ACF subsequently reduced that amount to

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[3](...continued)
part" (section 466(a)(8)(B)) as post-1993 orders in non-IV-D cases.

[4] The review report indicates that Texas excluded from its claim for FFP cases in which support orders were entered prior to September 1994. Thus, the disallowance involves only

(continued...)

the disallowance amount of $357,088, based on new information and supporting documentation that Texas provided. Texas Ex. G.

The review report indicates that Texas did not dispute the finding that the disallowed costs relate to support payments that were not made through wage withholding. On appeal, Texas reports that, despite its efforts to implement withholding, payments in non-IV-D cases have in some instances been made directly to the SDU by an obligor (i.e., the non-custodial parent), rather than by the obligor's employer.[5] This has happened, Texas reports, when the obligor is self-employed or between jobs, or when the employer has not yet implemented the order to withhold the obligor's wages. Texas Brief (Br.) at 6. Texas asserts that "it is these individual, often intermittent payments for which costs have been disallowed" by ACF. Id.

Texas's arguments

Texas argues that the statute's requirement that the SDU collect and disburse payments in non-IV-D cases under post-1993 support orders in which the income of the non-custodial parent is "subject to withholding" should be interpreted as requiring only that there be an order *authorizing* withholding, regardless of whether the support payments are collected through some other method. Texas argues that Congress intended that the SDU be responsible for "the collection and disbursement of payments" in all IV-D cases and "under all post-1993 non-IV-D orders, regardless of the 'income' source and whether or not withheld from 'wages' by an employer." Texas Br. at 9-10. Had Congress intended to require actual withholding, Texas argues, it would have written section 454B(a)(1)(B) to require the SDU to collect and disburse "all employer income withholding" instead of "payments under support orders . . . in which the income of the noncustodial parent is subject to withholding," as the statute reads. Texas also argues that Congress would have written section 466(a)(8)(b)(i) to require that the income of the non-

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[4](...continued)
support payments in non-IV-D cases made under post-1993 orders. Texas Ex. F, at App. File 44.

[5] Texas reports that all support orders issued in the State since full implementation of its SDU include "provision for income withholding" and require that child support orders be directed to the SDU, and that existing post-1993 orders in non-IV-D cases were "redirected" to the SDU via notice to the obligors and their employers. Texas Br. at 6.

custodial parent be subject to withholding "during periods of employment," instead of simply "on the effective date of the order," as it does currently. Id. at 10-11. Texas argues that "subject to withholding" thus encompasses obligors whose income is in the "constant" condition of being subject to withholding, whereas the Action Transmittal improperly requires that the income be in the "variable condition" of actually being withheld. Id.

Texas argues in addition that there are two primary purposes of the requirement to have a SDU for the collection and disbursement of support payments, which are not served by ACF's policy limiting SDU processing of payments in non-IV-D cases to those made through withholding. One purpose, Texas argues, "is to consolidate the processing of child support payments in all Title IV-D cases and in all other cases in which payments are made under a support order . . . under which the income of the obligor is subject to withholding for child support." Id. at 12. The other purpose, Texas argues, is to improve the efficiency of payment processing by requiring procedures that the SDU must apply, without distinguishing between IV-D and non-IV-D cases. These include requirements to use "automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments," including procedures "for receipt of payments from parents, employers and other States," to "ensure prompt disbursement" of the custodial parent's share of any payment and "to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments." Section 454B(b)(1),(3),(4). Texas argues that its SDU will not be able to perform those functions if it processes in post-1993 non-IV-D cases only support payments that are collected through withholding.

Texas further argues that the disallowance will impose administrative difficulties and increased costs by preventing Texas from using a consolidated, automated payment system for the processing of all child support payments. Texas asserts that it will have to process support cases manually or reconfigure its automated system so that each of the two-million-plus non-IV-D support payments made each year may be scrutinized to determine if it resulted from wage withholding. Alternatively, Texas asserts, its SDU will have to direct payments in non-IV-D cases that are not made through wage withholding to Texas counties, which previously processed support payments before title IV-D required SDUs, and then redirect them to the SDU once wage withholding begins. Texas asserts that "cases would be bounced

back and forth" between counties and the SDU when withholding in a case commenced or ceased depending on the obligor's employment and income. Texas Br. at 14. Texas asserts that complying with the Action Transmittal would result in costs greater than what Texas currently incurs in processing support collections in all non-IV-D cases, and would result in families not receiving support payments in a timely manner. Texas Br. at 15.

Thus, Texas argues that the Action Transmittal misreads the statute by interpreting "subject to withholding" as requiring actual withholding and by permitting the SDU to process payments in post-1993 non-IV-D cases only when "the individual's income is currently being withheld from his or her wages, ..." OCSE-AT-97-13, at A40. Texas notes that statute does not use the word "currently" as does the Action Transmittal.[6] Texas argues that the statute is sufficiently ambiguous to admit more than one meaning and effectively requests that the Board ignore or strike down the applicable language of the Action Transmittal (Texas asks that the Board "review the . . . disallowance with regard to the non-statutory basis (OCSE-AT-97-13) for its issuance"). Texas Br. at 7.

Analysis

We find that ACF's Action Transmittal is a reasonable interpretation of the phrase "subject to withholding" and is

[6] Texas also argues that the Action Transmittal misreads the statute by requiring that income be "subject to wage withholding," when the statute does not limit withholding to wages, which is simply one type of "income" as defined for the purposes of sections 466(a) and (b) ("any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest"). Texas Br. at 9, citing section 466(b)(8) of the Act. This argument is not germane to the appeal, however. Texas did not assert that any of the disallowed costs relate to payments that Texas collected through withholding, whether of wages or non-wage income. To the contrary, as noted above, Texas describes the payments for which costs have been disallowed as "individual, often intermittent payments" made directly to the SDU by obligors who are self-employed, between jobs, or whose employers have not yet implemented orders to withhold the wages. Texas Br. at 6. Moreover, it is clear from the entire question and answer in the Action Transmittal that ACF was not addressing any distinction among the types of income that may be withheld.

consistent with both the statutory language and the legislative history. Although the statute does not define "subject to withholding," the context of that phrase in the statute permits a reading that it refers to immediate withholding of the income of the non-custodial parent, not merely authorization to withhold at some future date. This interpretation is further supported by the legislative history, which also indicates that Congress did not intend to require a SDU to perform in all non-IV-D cases the full array of support-related activities required in IV-D cases, which would be the result of Texas's position here. Consequently, we defer to the Action Transmittal, of which Texas indisputably had ample actual notice, and reject Texas's arguments.

I. The statutory language supports ACF's interpretation, not Texas's.

Section 454B(a)(1) of the Act requires that a state's SDU process payments under support orders in all IV-D cases, and in non-IV-D cases under post-1993 support orders in which the income of the non-custodial parent is "subject to withholding pursuant to section 466(a)(8)(B)." The language of section 466(a)(8)(B) implicitly demonstrates that the non-custodial parent's income is not "subject to withholding" where the order of support authorizes withholding but support payments are collected through some means other than through withholding. That language requires all post-1993 child support orders in non-IV-D cases to include the requirement that-

> (i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

466(a)(8)(B)(i) of the Act (emphasis added).

The underlined language shows that income is not "subject to withholding" in situations where, for one of the two specified reasons, immediate withholding is not required. ACF could reasonably determine that, where one of those reasons exists — either good cause not to require "immediate income withholding,"

or a written agreement between the parties providing an alternative to income being subject to withholding — the income is not "subject to withholding" even if the support order authorizes withholding the income, contingent on some future event, such as cessation of good cause not to require immediate withholding, or the non-custodial parent's breach of the parties' agreement. If the phrase "subject to withholding" meant only the authority to withhold at some future point, as Texas argues, the statute need not have provided these exceptions to the requirement that the non-custodial parent's income in post-1993 non-IV-D cases be subject to withholding.

Additionally, Texas's interpretation that the support order need only authorize withholding would render superfluous the language in section 454B(a)(1)(B) limiting SDU processing of payments in non-IV-D cases to those made under post-1993 support orders in which income is "subject to withholding pursuant to section 466(a)(8)(B)." This is because section 466(a)(8) effectively requires that a IV-D state plan provide that post-1993 support orders in non-IV-D cases that do not make income "subject to withholding" must at least authorize withholding. It states that "child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part."[7] Subparagraph (B) of section 466(a)(8) contains four subparagraphs listing

[7] Similar requirements apply to IV-D cases. Section 466(b)(3)(A) requires that a non-custodial parent's income in IV-D cases be "subject to such withholding, regardless of whether support payments by such parent are in arrears . . . except that such income shall not be subject to such withholding" where "(i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement." In such cases, "[t]he income of the noncustodial parent shall become subject to such withholding . . . on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month . . . ." Section 466(b)(3)(B) of the Act. The IV-D regulations, at 45 C.F.R. § 303.100, "Procedures for income withholding," contain similar language. This language further demonstrates that Texas's interpretation of "subject to withholding" is untenable.

requirements that post-1993 orders in non-IV-D cases "will include." Among them is the requirement at subparagraph (B)(i) that the non-custodial parent's income "shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order" unless either of the two specified exceptions applies. A support order that does not make income subject to immediate withholding is thus an order "not described in subparagraph (B)" that must at least authorize withholding by including "provision for withholding," so that withholding "is available" should arrearages occur.[8]

Congress would not have needed to limit SDU processing of payments in non-IV-D cases under post-1993 support orders to those in which the non-custodial parent's income is "subject to withholding pursuant to section 466(a)(8)(B)" if "subject to withholding" meant only that withholding be authorized, as Texas argues. Texas's interpretation conflicts with a basic principle of statutory construction, that statutes should be construed so as to avoid rendering superfluous any statutory language. See, e.g., Georgia Dept. of Community Health, DAB No. 1973 (2005) (citing George Costello, Statutory Construction -- General Principles and Recent Trends at 10, Congressional Research Service Report for Congress, (updated Aug. 3, 2001)); North Ridge Care Center, DAB No. 1857 (2002) (noting that, in general, the Board strives to apply or interpret statutory or regulatory language in a way that does not render some provisions superfluous).

II. The legislative history supports ACF's interpretation, not Texas's.

To the extent that the phrase "subject to withholding" is ambiguous or susceptible of more than one interpretation (and ACF describes the Action Transmittal as setting forth ACF's "interpretation of the statutory language," ACF Br. at 5), the legislative history supports ACF, not Texas. The Family Support Act of 1988, Public Law No. 100-485, section 101, added the requirement that support orders in post-1993 non-IV-D cases provide that the non-custodial parent's income be "subject to withholding, regardless of whether support payments by such parent are in arrears," unless either of the two exceptions discussed above applies (section 466(a)(8)(B) of the Act). The

[8] None of the other requirements for post-1993 support orders in non-IV-D cases at subparagraphs (B)(i), (iii) and (iv) contradict this analysis.

description of section 466(a)(8)(B) in the legislative history indicates (as does the text) that the phrase "subject to withholding" means immediate withholding:

> The Senate amendment [which the conference adopted] requires that States provide for immediate wage withholding with respect to all support orders initially issued on or after January 1, 1994, regardless of whether a parent has applied for IV-D services.

H.R. Conf. Rep. 100-998, at 104-05 (1988), as reprinted in 1988 U.S.C.C.A.N. 2879, 2982-83.[9]

This interpretation of "subject to withholding" as used in section 466 is similarly confirmed in the legislative history of the statute that enacted section 454B and its requirement to operate a SDU, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law No. 104-193:

> Since January 1, 1994, the law has required States to use immediate income withholding for nearly all new or modified support orders, regardless of whether a parent has applied for child support enforcement services. There are two circumstances in which income withholding does not apply: (1) one of the parents argues, and the court or administrative agency agrees, that there is good cause not to do so, or (2) a written agreement is reached between both parents which provides for an alternative arrangement.

H.R. Report No. 104-651, at 1406 (1996), as reprinted in 1996 U.S.C.C.A.N. 2183, 2465 (emphasis added).

These statements confirm that when Congress used the phrase "subject to withholding," it meant immediate withholding, and not merely the authority to withhold, contingent on future events.

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[9] As enacted by the Family Support Act of 1988, section 466(a)(8)(B)(i) originally required that the "wages" of an "absent parent" be subject to withholding. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 changed these terms in section 466 and elsewhere to "income" and "noncustodial parent," respectively. Public Law No. 104-193, §§ 314(b)(2), 395(d). As discussed above, the distinction between "wages" and "income" is not relevant to our decision.

In response to this statutory context and legislative history, Texas cited no specific evidence in support of its interpretation of "subject to withholding" or its argument that Congress intended that the SDU be responsible for processing payments "under all post-1993 non-IV-D orders . . . ." Texas Br. at 9-10 (emphasis added). For the most part, Texas's arguments merely assume the correctness of its interpretation of "subject to withholding" as meaning only that the support order authorize withholding. Texas's position is also contradicted by other provisions in the statute and its history indicating that Congress did not intend to require a SDU to perform in all non-IV-D cases the full array of support-related activities required in IV-D cases. In particular, the history of the SDU requirement shows that, as ACF argues, the SDU was not meant to process payments in all child support cases:

> Reason for change
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> The State Disbursement Unit is and *[sic]* essential component, along with the Registry of Support Orders and the Directory of New Hires . . . that form the core of the reformed child support system. The Disbursement Unit will enable States to locate parents who owe support, issue withholding orders soon after the obligor is hired, process the payment and keep records at a central location, and then distribute the support payments in a timely manner.
>
> The committee provision requires only that cases being handled by the State agency be processed through the State Disbursement Unit. Here as elsewhere, the committee intends to interfere with private, nonsubsidized child support arrangements only when the obligated parent fails to pay support promptly.

H.R. Report No. 104-651, at 1403 (1996), as reprinted in 1996 U.S.C.C.A.N. 2183, 2462 (emphasis added).

The statute implements this intent that the SDU process payments under post-1993 orders in non-IV-D cases only when the obligor "fails to pay support promptly" by requiring that post-1993 orders in non-IV-D cases that are exempt from the requirement that income be subject to withholding must provide that withholding will commence if arrearages occur. Section 466(a)(8)(A) of the Act. Once income is "subject to withholding," the SDU must collect and disburse payments thereunder pursuant to section 454B(a)(1)(B) of the Act.

III. The disallowance is not inconsistent with the requirements for SDUs, as Texas argues.

Because the statute does not oblige SDUs to process payments in non-IV-D cases that are not collected through withholding, there is no basis for Texas's assertion that ACF's policy in the Action Transmittal will prevent it from conducting, with respect to such payments, some of the procedures required of SDUs by section 454B(b) of the Act. Among those procedures are "automated procedures, electronic processes, and computer-driven technology" that the SDU must use "to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments . . . ." Section 454B(b) of the Act. The State must also have procedures–

> to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent, except that in cases described in subsection (a)(1)(B) [post-1993 non-IV-D cases in which income is subject to withholding], the State disbursement unit shall not be required to convert and maintain in automated form records of payments kept pursuant to section 466(a)(8)(B)(iii) before the effective date of this section.

Section 454B(b)(4) of the Act.

Texas argues that its SDU cannot "furnish to any parent" the required information if its SDU does not process payments in non-IV-D cases that are not collected through withholding. Texas does not, however, identify any requirement for the SDU to furnish that information with respect to payments that it does not process. The quoted language from the statute qualifies the requirement to furnish payment information with respect to post-1993 non-IV-D cases in which income is subject to withholding. It does not follow that the SDU would have to furnish payment information without qualification in the case of non-IV-D cases not subject to withholding, as Texas's argument assumes. Nor does it follow that the SDU must apply the procedures required by section 454B(b) to payments in non-IV-D cases that the SDU does not process. As ACF notes in its brief,

> the requirement that the SDU must have procedures "to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent" must also be read in the context of Section

> 454B(a)(1). The SDU must provide payment information to "any parent" whose case is being processed by the SDU in accordance with Section 454B(a)(1)(A) and (B). Section 454B(a)(1)(A) and (B) clearly does not mandate that the SDU collect and disburse funds in all non-IV-D cases.

ACF Br. at 8.

The requirement to furnish timely information on the current status of support payments (and the other requirements of SDUs) thus provides no basis to ignore the meaning of "subject to withholding" in the statute and legislative history.

Additionally, Texas's argument that separating support payments in post-1993 non-IV-D cases made by withholding from those made by other means will impose costs and administrative difficulties provides no basis to reverse the disallowance. Texas does not explain why it would be unable to develop, in consultation with ACF, a method of reasonably allocating the costs of SDU activities among federal and state funding sources to reflect the proportion of SDU costs attributable to processing payments in non-IV-D cases in which income is subject to withholding. States typically employ such allocation methods to assure that federal public programs are charged only with the allowable costs of activities performed by state public assistance agencies that administer both federal and state programs. See, e.g., 45 C.F.R. Part 95, Subpart E, "Cost Allocation Plans;" Office of Management and Budget Circular A-87, Attachment D, "Public Assistance Cost Allocation Plans," codified at 2 C.F.R. Part 225; and ASMB C-10, "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government," HHS implementation guide issued pursuant to OMB A-87.

IV. Texas was bound by the requirements of the Action Transmittal.

As explained above, we conclude that ACF's interpretation of the phrase "subject to withholding" is reasonable because it is consistent with the relevant statutory language and supported by the legislative history. Texas had notice of ACF's interpretation via the Action Transmittal, which ACF issued in September 1997. As noted above, Question and Answer 40 of the Action Transmittal instructs that "'[s]ubject to wage withholding' . . . means that the individual's income is currently being withheld from his or her wages. It does not

include cases that may eventually be subject to income withholding if a payment is missed or cases which should be paying through withholding but are not." Elsewhere in the Action Transmittal, moreover, ACF further notified states that costs they incurred processing payments not collected through wage withholding were not eligible for FFP:

> Q21: If the State wants to process child support payments in non-IV-D cases not subject to wage withholding through the SDU, is FFP available in the costs of processing payments in these cases through the SDU?
>
> A21: No. Under 45 C.F.R. § 304.20(b), FFP is limited to services and activities pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the IV-D program. Should States choose to include payments by means other than withholding in non-IV-D cases in the SDU, they must allocate the costs associated with these cases.
>
> OCSE-AT-97-13.[10]

In general, the Board has held that where a statute or regulation is subject to more than one interpretation, the federal agency's interpretation is entitled to deference as long as the interpretation is reasonable and the grantee had adequate and timely notice of that interpretation or, in the absence of notice, did not reasonably rely on its own contrary interpretation. Illinois Dept. of Children & Family Services, DAB No. 2062, at 8 (2007) (citations omitted); Pennsylvania Dept. of Public Welfare, DAB No. 1634, at 18-19 (1997) (citations omitted) (both decisions addressing ACF action transmittals and noting that courts have typically held that they will defer to a federal agency's interpretation of a statute or regulation if it is reasonable and not inconsistent with congressional intent). Texas has not suggested that it did not receive the Action

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[10] Texas has not demonstrated that the support orders in the cases for which its SDU incurred the disallowed costs all required actual withholding "regardless of whether support payments . . . are in arrears, on the effective date of the order" as required by section 466(a)(8)(B)(i) of the Act. We therefore do not reach the question of whether processing costs for cases with such orders for which some payments are made by means other than withholding are eligible for FFP.

Transmittal or was not aware of its policy regarding payments in non-IV-D cases. Thus, even if we found Texas's interpretation to also be reasonable, which we do not in light of the context and history of the provision at issue, we would still defer to ACF's reasonable interpretation. Having received notice of ACF's reasonable interpretation of the "subject to withholding" requirement, Texas was thus bound by it.

Conclusion

For the reasons discussed above, we sustain the disallowance of $357,088 in FFP.

/s/
Judith A. Ballard

/s/
Sheila Ann Hegy

/s/
Leslie A. Sussan
Presiding Board Member